

WORK PERMIT

FREQUENTLY ASKED QUESTIONS

1. Is a school always required to issue a “Permit to Employ and Work” (B1-4) to an eligible minor?

No. It is solely within the discretion of the school district to determine whether a minor, who is still subject to the state’s compulsory education laws, may obtain a work permit and, therefore, be employed to work.

Each of the laws governing the issuance of work permits uses the word “may,” which is permissive, and, therefore, does not require the permit to be granted (*Education Code* Section 75). If the statutes had used the word “shall,” which means issuance is mandatory, then the school would not have discretion and would have to issue a permit to every eligible minor (*Education Code* sections 49110, 49111, 49112, 49113, 49114, and 49130).

2. Does a high school graduate, or a minor who has passed the California High School Proficiency Exam, need a work permit?

No. Once a minor is no longer subject to the state’s compulsory education laws, he/she is not considered a minor for purposes of the state’s child labor laws and is not required to obtain a work permit (*Labor Code* Section 1286[c]). California’s compulsory school attendance law requires a person to attend school until he/she is eighteen years of age or has graduated from high school or has passed the High School Proficiency Examination.

Federal law does not have a similar exception, and occupational restrictions may still apply. Under federal law an employer would still need a certificate of age for the student when employing a high school graduate under eighteen years of age. The school may issue a work permit as a certificate of age, but other forms of identification are also accepted as proof of age (*Education Code* Section 49114).

3. May a minor have more than one work permit?

Yes. A minor may work concurrently for more than one employer and, therefore, have more than one valid work permit. But, regardless of the number of employers and work permits, the total number of hours worked may not exceed the total number of hours allowed by law.

4. May a minor who is not a California resident or not enrolled in the school district be issued a work permit?

Yes. The local school district may issue a work permit if the minor enters the attendance area from another state within 10 days or less before the end of the school term. The minor may be issued a permit to work full-time because he/she is exempted from school attendance for the remainder of the school term (*Education Code* Section 48321).

The only requirement for work permit issuance is that the minor resides in the district that issues the permit. The minor does not have to be a California resident or be enrolled in the school, or reside with parents (*Education Code* Section 49110).

Any minor wishing to work in California must adhere to the state's work standards and regulations, even if not a permanent or full-time resident of California (*Labor Code* sections 1286 and 1299).

5. May a truant or “dropout” be issued a work permit?

No. A truant or “dropout” is in violation of California's compulsory school attendance laws and a school district is not permitted to sanction violation of those laws by issuing a permit to work. A truant or “dropout” is subject to arrest, and the parents are subject to infraction fines if the minor is found working without a work permit ((*Education Code* sections 48264, 48293, and 49112).

6. May an expelled minor be issued a work permit?

Yes. The law does not prohibit issuing a work permit to an expelled minor. An expelled minor must be provided educational services. Options include, but are not limited to, community day school, juvenile court school, another school district, etc. When the expelled minor enrolls in and attends school, only the district in which the minor resides may issue -or refuse to issue -the work permit (*Education Code* sections 48915, 48915.01, 48915.1, 48915.2, and 48926).

7. Is a parent/employer required to obtain a work permit for his/her child who works for the family business?

Yes. Work permits are required for all minors employed in manufacturing, mercantile, or similar commercial enterprises (*Education Code* Section 49141). Exemptions are allowed for agricultural or domestic work performed on land that is owned, operated, or controlled by the parents (*Labor Code* Section 1394). All regulations concerning hazardous occupations and other work forbidden to minors remain in effect for minor children working for their parents.

8. Does a parent/employer have to provide workers' compensation insurance for his/her children/employees?

Yes. Workers' compensation insurance must be provided for an employee regardless of whether the employee/minor is the employer's child. Exceptions may be made for an employer who has been given permission by the Department of Industrial Relations to be self-insured (*Labor Code* sections 3700 and 3701).

9. Does an emancipated minor need a work permit to be employed?

Yes. The only exception from child labor and compulsory school attendance laws enjoyed by an emancipated minor is that he/she may apply for a work permit without the parent's permission. An emancipated minor may sign, in place of the parent, the "Statement of Intent to Employ Minor and Request for Work Permit" (form B1-1 or B1S-1 prescribed by the California Department of Education pursuant to *Education Code* Section 49162 and as stated in *Family Code* Section 7050[e][16]). "Emancipated minor" is defined in *Family Code* Section 7002.

10. In the interest of expediency, may a school issue a blank permit to a minor and, when he/she secures employment, have the employer complete the necessary forms?

No. A school must never issue a blank work permit. The fully completed "Statement of Intent to Employ Minor and Request for Work Permit" (form B1-1 or B1S-1) must be returned to the school district (*Education Code* sections 49162 and 49163). Only the school district has discretion to issue a work permit, and the district's lawfully authorized agent (*Education Code* Section 49110) must complete all conditions as to its issuance.

11. Must a public school or other governmental agency require a work permit for an employee/minor?

No. It is the position of the California Division of Labor Standards Enforcement that the state's *Labor Code* does not apply to a state or local agency unless the agency is expressly included in the statute. The child labor statutes do not expressly include state or local agencies.

State and local agencies are subject to the federal Fair Labor Standards Act and must follow all of its child labor provisions, including having a certificate of age to verify permissible employment (*California Code of Federal Regulations, Title 29, Section 212*). Contact the Wage and Hour Division of the U.S. Department of Labor for further information. (See Appendix A of the Work Permit Handbook for the telephone number.)

12. How can it be determined whether a minor is an independent contractor or an employee?

For purposes of workers' compensation, *Labor Code* Section 3351 defines "employee" generally as "every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written."

Labor Code Section 3353 defines "independent contractor" generally as "any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not the means by which such result is accomplished."

The Labor Commissioner considers many factors in determining independent contract status. Those factors include, but are not limited to:

- Control of work conditions and schedules
- Training
- Integration
- Where work is done
- Investment in facilities or equipment
- Working for more than one firm
- Supervision
- Pay
- Hours of work
- Order of tasks
- Work supplies
- Business distinct from employer

For a determination of whether a worker is an independent contractor or an employee, contact the local office of the Department of Industrial Relations, Labor Standards Enforcement Division. (See Appendix A of the Work Permit Handbook for the address.)

13. Who may issue work permits?

Education Code Section 49110 specifies that only the following persons may issue work permits:

- Superintendent of any local public school district in which any minor resides; or
- Superintendent of county schools if the minor resides in a portion of a county not under the jurisdiction of the superintendent of a school district; or
- Person holding a services credential with a specialization in pupil personnel services authorized, in writing, by the superintendent (see Appendix B of the Work Permit Handbook for a template of a letter); or
- Work Experience Education teacher/coordinator authorized, in writing, by the superintendent (see Appendix B of the Work Permit Handbook for a template of the letter); or
- Person authorized, in writing, by the superintendent if the designated person is not available, and delay in issuing a permit would jeopardize the ability of the pupil to secure work; or
- Person authorized, in writing, to issue work permits if the superintendent is absent from the district and the district does not employ a person holding the necessary credential or a Work Experience Education teacher/coordinator.

The Division of Labor Standards Enforcement (DLSE) issues all entertainment industry permits. Inquiring parents or employers must be referred to the nearest DLSE office. (See Appendix A of the Work Permit Handbook for the locations.)

14. May a private school issue work permits to its students?

Yes. At the discretion of the superintendent of the public school district, a private school may be authorized, in writing, to issue work permits for its students. (See Appendix C of the Work Permit Handbook for a template of the letter to authorize a qualified person to issue the permit.) The person authorized to issue work permits must be knowledgeable about federal and state labor laws affecting minors and the work permit issuance process (*Education Code* Section 49110.1).

15. May a work permit be issued by the public school to a pupil who attends a private school located within the school district boundaries, even though the pupil is not a resident of the school district?

Yes. The California Department of Education, Deputy General Counsel's office, has found that, pursuant to written authorization from the superintendent of the public school district, a work permit may validly be issued for such a pupil.

Further, the findings indicated that the intent of *Education Code* sections 49110 and 49110.1 was not to restrict, on the basis of legal residence, the authority to issue work permits, but rather to consider the school district in which the pupil attends school.

16. May the local school issue a work permit for a child who is under school age?

No. A child under school age is probably being employed in the entertainment industry. In such a case, permission to work must be issued by the State Labor Commissioner through the Department of Industrial Relations, Department of Labor Standards Enforcement (*Education Code* sections 48225, 48225.5, and 49111; *Labor Code* sections 1308.5, 1308.6, and 1308.7).

17. What process should be followed to issue a "Permit to Employ and Work" (form B1-4)?

The minor/student, after obtaining a promise of employment, must obtain the "Statement of Intent to Employ Minor and Request for Work Permit" (form B1-1 or B1S-1) from the school/school district.

The minor must complete the "minor" section, request that the employer and parent complete their sections (making certain to obtain both required signatures), and then return the completed form to the appropriate school authority.

The school authority must verify the minor/student's date of birth and the type of work permit to be issued. If all requirements are met, the work permit issuing authority may issue the "Permit to Employ and Work."

The local school district has discretion to impose additional requirements for the issuance of a work permit. For instance, the school district may have a policy requiring the minor to maintain a 2.0 grade point average (GPA). In such a case, the work permit issuing authority would need to verify the student's GPA. Another policy might require the minor to exhibit his/her social security card for verification by the school authority. Other local policies should be verified through the work permit issuing authority.

18. Must the work permit issuing authority use only school records to verify the date of birth on the work permit application form (form B1-1 or B1S-1)?

No. The date of birth may be verified by using a birth certificate, baptism certificate, or a passport in lieu of school records. When there are no available official documents, an affidavit by the parents or legal guardian may suffice (*Education Code* Section 49133).

If school records are not used, a photocopy of the age verification document should be attached to the school's copy of the work permit.

19. Does a student have to present his/her social security card to school authorities when applying for a work permit?

No. The statement of intent to employ (form B1-1 or B1S-1) must contain, among other information, the name, address, telephone number, and social security number of the minor (*Education Code* Section 49163). The statute does not specify that the card itself must be presented, only that the number be on the application for a work permit.

The California Department of Education maintains that the statement (form B1-1 or B1S-1) signed by the parent or legal guardian ("I hereby certify that . . . the information herein is correct and true") holds the adult responsible for providing accurate information.

School districts may be more restrictive and require the monitor to provide the social security card for purposes of verification before the work permit is issued.

20. May a work permit be issued for a minor who is being “home schooled”? Isn’t a “home school” the same as a private school? When a noncredentialed parent is teaching his/her own child using a correspondence course or other type of course, may the child be issued a work permit?

Education Code Section 49110 authorizes school district officials to issue work permits to eligible students. *Education Code* Section 49110.1 authorizes the school district superintendent to designate a private school official (see Appendix C) to issue work permits to students who are enrolled in a private school pursuant to *Education Code* Section 48222. It is the exclusive responsibility of the school district to decide, under district criteria, whether the private entity is a private school as described in *Education Code* Section 48222. The same determination would be made regarding a parent who teaches exclusively his or her own child or children and who files a private school affidavit pursuant to *Education Code* Section 33190. School officials seeking further guidance should consult their district’s legal counsel.

21. Does the school have any discretion to limit the minor’s work activity?

Yes. As a condition of issuance, the local school/school district may reduce maximum work hours and impose additional occupational restrictions not specified in statute or regulation. The work permit issuing authority does not have discretion to extend hours beyond the maximum specified in statute or waive any occupational restrictions specified in statute or regulation.

For example, sixteen and seventeen year-olds are permitted to work up to 48 hours a week during the school year (*Labor Code* Section 1391). Most schools, however, impose a weekly limit that ranges between 20 and 36 hours per week while school is in session. (See charts in Chapter 2 of the Work Permit Handbook).

22. When school is in session, a sixteen or seventeen year-old is permitted to work up to 48 hours a week; 4 hours on school days; and 8 hours on non-school days and days preceding a non-school day. May a sixteen or seventeen year-old actually work 48 hours in a week while school is in session?

Yes. Federal law defines a week that “school is in session” as a week in which school is scheduled for one day. An example might be the week during which Thanksgiving is celebrated.

A school might be in session only on Monday and Tuesday. The minor could work eight hours per day on Tuesday (day preceding a non-school day), Wednesday, Thursday, Friday, Saturday, and Sunday. Monday would be the day off. In that example, the student would have worked 48 hours while school was in session (*Education Code* sections 49112 and 49116; *Labor Code* Section 1391).

23. May a fourteen or fifteen year-old work during the school day?

No. A fourteen or fifteen year-old is limited to eighteen hours per week when public school is in session. All work hours must be outside the scheduled public school day. An exception is made for students enrolled in Work Experience Education or career exploration programs; these students may work up to 23 hours per week and, if appropriate, during the hours school is in session. (See charts in Chapter 2 of the Work Permit Handbook.)

24. What is a “school day” and what does “school in session” mean?

A minimum schoolday in any high school or junior high school is defined as any day in which the minor is scheduled to attend school for 240 minutes. Anything less does not qualify as a schoolday, and work hours may be increased on such days even though the minor receives instruction on that day (*Education Code* sections 46141 and 46142; *Labor Code* Section 1391).

Exemptions to the 240-minute standard are for students who attend evening high school, a regional occupational center, opportunity classes, a continuation high school, late afternoon or Saturday vocational training programs conducted under a federally approved plan for vocational education, and for students enrolled in an approved Work Experience Education program (*Education Code* Section 46141). In addition, students in grades eleven and twelve who attend a college or a university part-time are exempt from a full 240-minute minimum day.

Continuation high schools are required to have a 180-minute schoolday. Independent study programs are defined instructionally in the *Education Code*, but there are no regulations concerning “seat time.”

State law has no definition of “school in session” but the federal government defines the term as any week in which the public school for the county is in session for at least one day. (See “Hours of Work” in Chapter 2 of the Work Permit Handbook.)

Private schools must also adhere to public school calendars, hours when school is in session, regulations and related labor laws when issuing work permits (form B1-4).

25. How long do copies of work permits have to be retained?

The school district must retain a copy of the work permit application (form B1-1 or B1S-1) and work permit (form B1-4) until the end of the fourth year after the work permit was issued. Those files may be retained on a computer disk(s) and, if requested, can be printed for examination (*California Code of Regulations, Title 5, Section 16026*).

The employer must retain the minor’s work permit until the beginning of the fourth year after the permit was issued (*Labor Code* sections 1174 and 1299).

26. Does a minor working in a restaurant attached to a casino on an Indian reservation need a work permit?

There is no definitive answer to this question. Each situation must be dealt with on a case-by-case basis. Who has jurisdiction? The state or federal government? Is the casino run by the tribe or an outside entity? Who is the employer? Is the work area restricted to the restaurant or do the minors serve meals in the casino? Is the restaurant distinctly separate from the casino (e.g., separated by a door) or is it part of the gaming area? Contact your regional office of the California Division of Labor Standards Enforcement with questions about specific situations. (See Appendix A of the Work Permit Handbook.)

27. May an entry-level employee be paid less than the minimum wage?

Yes. The Industrial Welfare Commission Orders of 2001 state that “employees during their first one-hundred sixty (160) hours of employment in occupations in which they have no previous similar or related experience, may be paid not less than eighty-five percent (85 percent) of the minimum wage rounded to the nearest nickel.”

On January 1, 2001, when the minimum wage was increased to \$6.75 per hour, the “Learners” wage became \$5.75 per hour.

28. When is a student considered a trainee or a volunteer, not an employee?

The Fair Labor Standards Act (FLSA) applies to any person involved in an employer-employee relationship. The FLSA is administered by the U.S. Department of Labor, Wage and Hour Division, with respect to private employment, state and local government employment, and other agency employment. (*Code of Federal Regulations, Title 29, Section 204.*)

The mere knowledge by an employer of work done for him/her by another is sufficient to create the employment relationship under the FLSA. The U.S. Department of Labor has always considered work performed as part of an evaluation or training program to be compensable.

Whether a trainee or student is an employee under the FLSA will depend on all of the circumstances surrounding the activities on the premises of the employer. A student is not required to be paid if he/she is a trainee, a volunteer, or donates labor to a school (e.g., in-school placement).

Trainee

The trainee/student is NOT an employee within the meaning of the FLSA if *all six* of the following criteria apply to the situation:

1. The training, even though it includes actual operation of the employer's facilities, is similar to that which would be given in a vocational school (i.e., a curriculum is followed and the student is under continued and direct supervision either by representatives of the school or by employees of the business).
2. The training is intended to benefit the trainee/student rather than to meet the labor needs of the business.
3. The trainee/student does not displace a regular employee, does not fill a vacant position, does not relieve an employee of assigned duties, and does not perform services that, although not ordinarily performed by employees, clearly are of benefit to the business.
4. The employer that provides the training derives no immediate advantage from the activities of the trainee/student and, on occasion, the employer's operations may actually be impeded.
5. The trainee/student is not necessarily entitled to a job at the conclusion of the training period.
6. The employer and the trainee/student understand that the trainee/student is not entitled to wages for the time spent in training.

Examples of unpaid training include the following situations:

- In a hospital – The student job-shadows a nurse by following and observing the nurse.
- In a supermarket – The student does *simulated* work with other students and/or the teacher: rings-up baskets of groceries, makes change, learns assorted transactions and returns groceries to the shelves.
- In an office – The student enters worthless data on a company computer that is not used to conduct business.

Volunteer

Commercial businesses may never legally utilize unpaid volunteers.

An individual may serve as unpaid volunteer for public service or for religious or humanitarian objectives. Typically authorized volunteer sites include established volunteer programs operated by charitable nonprofit organizations, governmental agencies, hospitals, and nursing homes. A

student may be provided opportunities to participate in meaningful educational activities or programs. For example, a student may *choose* to assist with school fund-raisers, deliver meals to the homebound, visit patients in nursing homes, or solicit contributions.

A student may be considered to be a “volunteer” within the meaning of the FLSA if the intent is clearly to donate his/her services for the public good. Schools may not legally *require* a student to “volunteer” or perform unpaid public service as a way to gain vocational experience, as a condition of graduation, or as a prerequisite for other school activities. Only the courts may require or commit persons to perform unpaid public service work as part of a correctional program, in lieu of serving prison time, or while in a work-release program.

A person employed by a religious, charitable, governmental, or nonprofit organization is not allowed to “volunteer” the same type of services (any activity directly related to the job) during the weeks employed.

Examples of volunteers:

- The student *chooses* to participate voluntarily at the city’s established zoo volunteer program.
- The student volunteers as a “Candy Striper” to donate some spare time to helping patients in a hospital.

In-School Placement

As part of the overall educational program, schools may permit or require a student to engage in various school-related work programs in the school district for periods of no more than an hour per day (or an equivalent amount of overall time).

Examples of in-school placement are as follows:

- The student helps in the school lunchroom for periods of 30 minutes to one hour per day.
- The student performs minor clerical work in the school office or library.

Application of the Fair Labor Standards Act to School-Related Programs

Do all of the following criteria apply to the individual student's placement at a business establishment?

(The six criteria should be used to determine whether students have to be paid and Federal Labor Standards Act (FLSA) child labor laws apply.)

- | | |
|----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> YES <input type="checkbox"/> NO | 1. The training, even though it includes actual operation of the employer's facilities, is similar to that which would be given in a vocational school (i.e., a curriculum is followed and the student is under continued and direct supervision either by representatives of the school or by employees of the business. |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | 2. The training is for the benefit of the trainee or student; such placement is not made to meet the labor needs of the business. |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | 3. The trainee or student does not displace a regular employee, does not fill a vacant position, does not relieve an employee of assigned duties, and does not perform services that, although not ordinarily performed by employees, clearly are of benefit to the business. |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | 4. The employer providing the training derives no advantage from the activities of the trainee or student and, on occasion, the employer's operations may actually be impeded. |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | 5. The trainee or student is not necessarily entitled to a job at the conclusion of the training period. |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | 6. The employer and the trainee or student understands that the trainee or student is not entitled to wages for the time spent in training. |

YES to all six criteria

NO to any of the six criteria

The individual student is NOT an employee within the meaning of the FLSA. Wages are not required.

Either the business *or* the school system must compensate the student worker; both parties are jointly responsible for compliance with labor laws.